

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

JAMES HENDERSON,)	CASE NO. 4:08 CV 1409
)	
Petitioner,)	JUDGE DAN AARON POLSTER
)	
v.)	
)	<u>MEMORANDUM OF OPINION</u>
WARDEN,)	<u>AND ORDER</u>
)	
Respondent.)	

On June 11, 2008, this action was transferred to this court from the United States District Court for the Northern District of Maryland. Petitioner *pro se* James Henderson, an inmate at the Northeast Ohio Correctional Center (NEOCC), seeks an order reducing his federal sentence by three days for each day served at NEOCC, on the ground that he is being held under cruel and unusual conditions of confinement. Petitioner cites numerous cases in support of his request. See Petition, p.3.

As a threshold matter, in light of the relief sought, the court construes this action as one sounding in habeas corpus. See, e.g., Preiser v. Rodriguez, 411 U.S. 475 (1973) (sole federal remedy when prisoner challenges the very fact or duration of his physical imprisonment is a writ of habeas corpus). However, the cases cited by petitioner in support of his request for sentence modification

all concern downward departures made by the trial court at sentencing. As such, they are wholly inapplicable here.

Accordingly, the petition is denied and this action is dismissed pursuant to 28 U.S.C. § 2243. The court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

/s/Dan Aaron Polster 8/5/08
DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE